

The Westfield MOU was produced by the Western MA Economic Development Council:

Memorandum of Understanding

The following is an example of a Memorandum of Understanding (MOU) adopted by the City of Westfield. This is provided to show the relationship that must be established between the municipality and the Business Improvement District. The MOU spells out the services the city currently provides and what additional services will also be supplied. The BID's own proposed budget will show up in the petition. Each BID MOU will invariably be customized to reflect the unique issues the BID has been charged with addressing. The MOU can be created as a component of the original petition or it can be created at the conclusion of the BID process. It is recommended that the MOU be done as part of the original petition. The MOU will provide property owners with a strong understanding of what the current level of services are and what they will be supplementing. It is also an opportunity to delineate any additional services the municipality will provide.

MEMORANDUM OF UNDERSTANDING

by and between the
CITY OF WESTFIELD
and

WESTFIELD BUSINESS IMPROVEMENT DISTRICT, INC.

THIS MEMORANDUM OF UNDERSTANDING is made by and between THE CITY OF WESTFIELD (the "City"), a body politic and corporate of the Commonwealth of Massachusetts, acting by and through its Director of the Department of Community Development and Planning with the approval of its Mayor, and WESTFIELD BUSINESS IMPROVEMENT DISTRICT, INC. ("WBID"), a non-profit corporation organized under the laws of the Commonwealth of Massachusetts and the designated manager for the WESTFIELD BUSINESS IMPROVEMENT DISTRICT (the "District"), a Business Improvement District to be established in the City of Westfield in accordance with Massachusetts General Laws ch. 40O.

PRELIMINARY STATEMENT

Chapter 173 of the Legislative Acts of 1994 was approved by the Governor of Massachusetts on November 7, 1994, to be effective February 5, 1995, as Chapter 40O of the Massachusetts General Laws (the "Enabling Act"), to authorize the creation and operation of Business Improvement Districts ("BIDs").

WBID has been organized and authorized to manage, operate, implement, develop, enlarge, and seek financial support for the District. The District shall be implemented as authorized by the Enabling Act and in accordance with the Improvement Plan, and District members are willing to implement the District if it has the support of the City as set forth in this Agreement.

In furtherance of the purposes of the Enabling Act, which hereby is incorporated by reference, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto agree as follows:

AGREEMENT

ARTICLE I DEFINITIONS

1.1 Definitions

1.1.1 Certain terms are defined in the heading and the recitals hereto. In addition to those definitions, as used in this Agreement, the following definitions shall apply:

(a) “Agreement” means this MEMORANDUM OF UNDERSTANDING by and between WBID and the City, and any other agreement amending or supplementing this Memorandum.

(b) “Base Line Services” means the minimum level of the kind and quantity of Basic Services to be provided within the District by the City, as described more fully in Article II.

(c) “Basic Services” means the following types of services to be provided and maintained by the City within the District:

- landscaping
- maintenance of public areas
- marketing and promotion
- police protection
- fire protection
- parking management
- gas and electric services
- street and alley cleaning
- trash collection
- street lighting

(d) “District” means the geographic area in downtown Westfield established as a Business Improvement District and described in the Improvement Plan approved in accordance with the Enabling Act.

(e) “Fee” means the payment for services or improvements specified in the Improvement Plan to be paid by members of the District.

(f) “Improvement Plan” means the strategic plan for the District approved by the City in accordance with the Enabling Act, as it may be updated from time to time.

(g) “Westfield” shall mean the area within the geographic boundaries of the City of Westfield, Commonwealth of Massachusetts.

ARTICLE II BASE LINE SERVICES

This section references the services currently provided by the city/town departments. This portion of the MOU sets a timeframe for reviewing and updating the services. The services provided by each city/town department are attached to the MOU (referenced here as Exhibit A). The Department Reports set forth the current **standards, guidelines and service levels for Basic Services within the District**. The MOU should also outline how compliance, modifications to, extenuating circumstances, authorization, and if baseline services are added will be dealt with.

2.1 City Services

2.1.1 The City has provided to WBID copies of reports provided by various Departments of the City (collectively, the “Department Reports”), which are attached hereto as Exhibit A and made a part hereof. The Department Reports set forth the current standards, guidelines and service levels for Basic Services within the District.

2.1.2 In the absence of the circumstances described elsewhere in this Article II, the City shall, at all times during the periods described in Sections 2.2.1 and 2.2.2, provide Basic Services of the kind and in the quantities described in the Department Reports (collectively, the “Base Line Services”).

2.1.3 In order to monitor the Base Line Services, the City agrees to collect and provide to WBID, reports from the applicable Departments of the City in form and content comparable to the Department Reports, for each fiscal year during the term of this Agreement. Proposed Department Reports, based on anticipated budget levels, shall be prepared and delivered at least two (2) calendar months prior to the start of each fiscal year. Beginning in the year 2005, and annually thereafter, final Department Reports shall be submitted within two weeks after the approval of a final budget by the City Council.

2.1.4 Each Department Report provided to WBID shall be signed by the department head.

2.2 Compliance with Level of Base Line Services

2.2.1 In the absence of the extenuating circumstances, and subject to the factors described elsewhere in this Article II, the City agrees to provide, within the District, the Base Line Services for each of the Basic Services throughout the initial period of authorization of the WBID.

2.2.2 Should the Improvement Plan be updated, as provided for in the Enabling Act, this Agreement shall be extended for each succeeding period of operation.

2.2.3 The Base Line Services assume an average level of demand and activity. The parties recognize that Basic Services provided on any particular day or period may vary based on special events, such as festivals, sports events, parades or conventions, or weather conditions, such as snow storms or electrical storms, or unanticipated short-term demands outside the District. However, it is the expectation of the parties that on the substantial majority of days in any year, the City will perform each of the Basic Services at no less than the level of Base Line Services.

2.2.4 Subject to agreement by and between the City and WBID, the Base Line Services may be adjusted to reflect new methodologies and policies, such as the institution of other forms of community-based police enforcement, expanded joint marketing among the City, WBID, and members of the District, or more efficient cleaning and maintenance programs. With each period of operation of the District, the parties will consider changed circumstances, provided that the basic thrust and intent of this Agreement is maintained in any adjustment.

2.3 Modifications

2.3.1 The following principles shall apply with regard to the provision, suspension, diminution or increase of Basic Services within the District:

(a) No decrease or suspension in Basic Services shall occur within the District unless there is an overall decrease or suspension in services necessitated by changes in funding, policy or resources, and then only in proportion to the decreases implemented throughout Westfield.

(b) Any increase in Basic Services generally throughout Westfield shall be matched with increases in such services within the District, in proportion to increases implemented elsewhere within Westfield.

2.3.2 Except as provided in Section 2.3.1, above, this Memorandum of Understanding may be amended only by a written agreement duly executed on behalf of both the City and WBID.

2.3.3 Nothing in this Agreement shall limit the rights of the members of the District from dissolving the District, as provided in the Enabling Act.

2.4 Extenuating Circumstances

2.4.1 The City shall maintain Basic Services at the levels specified in this Article II, except as such levels of service are affected by the circumstances described in Section 2.3.1. The City's agreements herein shall not supersede any obligation of the City pursuant to the United States or Massachusetts constitutions, the City Charter, applicable federal, state or local laws or ordinances, or the lawful order of a court of proper jurisdiction.

2.4.2 In the event of extreme emergency, as declared by the Mayor of the City or the Governor of the Commonwealth of Massachusetts, Basic Services may be temporarily discontinued or reduced in all or part of the District, notwithstanding the continuation of such services elsewhere in Westfield. The parties acknowledge that such circumstances are likely to be highly unusual and temporary in nature, and that Base Line Services will be restored at the earliest opportunity.

2.5 Authorization for the District. To the extent necessary, the City hereby authorizes WBID, in its role as administrator for the District, to engage in services supplemental to all Basic Services within the public streets, roads, sidewalks and alleys to the fullest extent, but not beyond that, permitted by the Enabling Act.

2.6 Future Arrangements. The parties acknowledge that the City and WBID may in the future arrange to have certain Basic Services performed by WBID under contract with the City.

ARTICLE III BASE LINE PLUS SERVICES

The **Base Line Plus Services** will vary considerably depending on the community and the ability of the community to provide additional funds and services. The services here are unique to Westfield and their negotiations for the City's role in supporting the BID. Each community will develop a list of Base Line Plus Services that correspond with their BID's goal and objectives and the role of the city or town's ability to support those activities through funds or increased city/town services. There will be communities that only provide the services of the tax collector for processing of the BID assessment. These are above and beyond what the city currently provides.

3.1 Services

3.1.1 The City is a property owner in the District, and agrees to remain a participating member of the District, although the City is exempt from the Fees that will be assessed to participating property owners in the District. As a property owner, a participating member, and representative of the citizens of Westfield, the City will benefit from the enhancements and supplemental services of the Improvement Plan within the District. In recognition and consideration of such benefits and services to the City, the City agrees to provide the services and resources described below in this Article III (hereinafter referred to as "Base Line PLUS Services").

- (a) The City will fund WBID expenses at \$50,000.00 annually.
- (b) In addition to the funding described in (a), above, the City will fund, on an annual basis, a façade grant program targeted at properties in the District, in the amount of \$25,000.00. WBID will match such funding for the program provided by the City.
- (c) The City will purchase, or arrange for the purchase of, capital equipment needed by WBID for maintenance programs including, but not limited to, sidewalk sweepers, and graffiti removal and powerwashing machines. The City will provide for the storage, maintenance and fuel for such capital equipment, at no cost to WBID.
- (d) The City will provide District Fee billing and collection services at no cost to WBID.
- (e) The City will pick up trash bags left curbside in the District by WBID maintenance personnel or contractors at no cost to WBID.
- (f) The City will locate its Community Policing headquarters within the District, and will relocate its Community Policing headquarters within the Westfield Multimodal Transportation Center, upon completion of the construction of the Center.
- (g) The City will provide space at the Westfield Multimodal Transportation Center, upon completion of its construction, for Westfield State College shuttle bus service.

(h) The City will support on an annual basis, through its Departments, five (5) WBID-sponsored, special events, at no cost to WBID. Such support shall include, but is not limited to: traffic control; security; fire protection and prevention; first aid; trash collection; and access to electric, gas and water service.

(i) In addition to the City's snow removal obligations under Article II, and otherwise under the General Laws, the City will remove drifts or accumulations of snow on sidewalks, tree belts and the sides of roadways within the District that equal or exceed the height of three feet (3'), at no cost to WBID.

(j) The City, through its Gas & Electric Light Department, will provide support for the installation, display, and removal of banners, signs, flags, or decorations provided by WBID, at no cost to WBID.

3.2 Capital Improvements

3.2.1 In addition to the Base Line PLUS Services, described in Subsections (a)-(j) of Section 3.1.1, the City agrees to construct, renovate or implement capital improvements, described in Subsections (a)-(c) of this Section.

(a) The Main Street/Broad Street/Park Square Reconstruction Project: This project seeks to address narrow traffic lane widths on Main and Broad Streets, which become constricted with winter snow accumulation, and traffic signal improvements to relieve traffic congestion along the Main Street/Broad Street corridor. The Park Square Green design component incorporates several proposals, as preliminarily identified by the Historical Commission, including expanding the park by way of occupying the off-street parking on its north side. The Green would be returned to a more historic layout of open lawn to accommodate modern usage with a gazebo structure, similar in appearance to the one currently located at Grandmother's Garden (located off of Smith Avenue), to be used for concerts and speeches, and which could be enclosed in glass in the winter months to accommodate events such as Santa's visits. A fountain would remain on the Green, though re-located further south to an area set aside for the multiple historical monuments and tablets currently housed on the Green.

(b) Gas Light Initiative: This project seeks to establish an arts and entertainment district atmosphere in downtown Westfield through various streetscape enhancements targeted at pedestrians. Brick walks, block pavers in roadways, and gas light-type lighting, in a designed urban forest accented with tree grates and street furniture, including benches, planters, and kiosks will all combine to stamp the downtown as an ideal place for evening strolls to a local bistro or cafe.

(c) Alleyway Project: This project seeks to rehabilitate a blighted alleyway space located between Arnold and Franklin Streets into a pedestrian walkway.

3.3 Identification of Additional Sources of Funding

3.3.1 The City agrees to work with WBID to identify additional sources of revenue (e.g., Massachusetts Turnpike Authority funds, Gateway grants, etc.) available to the City to fund enhancements, services, benefits, or capital improvements within the District, subject to the City's budgetary constraints and appropriation of funding.

ARTICLE IV INSURANCE AND INDEMNIFICATION

4.1 Insurance and Indemnification. WBID shall obtain and maintain for the period in which this Agreement is in effect, insurance as to liability and casualty, property damage and injury to persons, at levels reasonably acceptable to the City. The City shall be named as an additional insured, and to the extent of such insurance, the City shall be indemnified as to claims filed with regard to acts or omissions of WBID. WBID shall provide certificates of insurance to the City on or before July 1 of each year in which the Agreement is in effect. Such insurance shall be procured through an insurer licensed and authorized to conduct business in Massachusetts.

ARTICLE V BILLING AND COLLECTION

The service of billing property owners for the BID assessment and the processing of those funds is seen as a key role the municipality will play in the implementation and continuation of the BID. This relationship should be worked out as part of the implementation strategy for creating a BID.

5.1 Billing. As authorized in the Enabling Act, the City, through the Treasurer's/ Collector's Office and/or other departments, will provide all necessary billing services for WBID, including the identification and maintenance of a register of all properties within the District, the preparation and mailing of bills for District Fees and the inclusion of WBID reports and summaries in any material included with an annual (or more frequent) bill.

5.2 Collection and Enforcement

5.2.1 As authorized in the Enabling Act, the City, through the Treasurer's/Collector's Office, will collect the Fees and transmit all amounts collected not less often than bi-weekly to WBID by check to an account maintained at a local bank. Collection and delinquency reports shall be provided monthly. The City shall follow its customary procedures in collecting and enforcing claims against delinquent taxpayers in connection with collection of the Fees.

ARTICLE VI MISCELLANEOUS PROVISIONS

6.1 Conflicts of Interest; City Representatives Not Individually Liable. No member, official, representative, contractor or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, representative, contractor or employee participate in any decision relating to this Agreement which affects his personal interests or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested. No member, official, representative, contractor or employee of the City shall be personally liable to WBID or any successor in interest in the event of any default or breach by the City.

6.2 Invalidity of Particular Provision. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement shall be valid and shall be enforced to the fullest extent of the law.

6.3 Third Party Beneficiary. Nothing contained in this Agreement shall be construed to confer upon any other party the rights of a third party beneficiary, except as may be otherwise specifically provided for herein.

6.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts together shall constitute but one and the same Agreement.

6.5 Force Majeure. The provisions of this Agreement are subject to the following limitations: if by reason of acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the United States of America or the Commonwealth of Massachusetts, or any department, agency, political subdivision or official thereof, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery; partial or entire failure of utilities; or any cause or event not reasonably within the control of a party hereto, that party is unable in whole or in part to carry out its agreements referred to in this Agreement, the affected party shall not be deemed in default during the continuance of such inability. The affected party shall use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the affected party, and the affected party shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the affected party, unfavorable to the affected party.

6.6 Licenses and Permits. The City will facilitate to the fullest extent possible any necessary application by WBID for permits, licenses or other approvals not specific to a particular property.

6.7 Assignment. This Agreement may not be assigned by the City or WBID without the prior written approval of the other.

6.8 Execution by WBID. WBID and the undersigned officer of WBID hereby warrant and represent that the undersigned officer of WBID has been duly authorized and directed by WBID to execute this Agreement, to bind WBID to this Agreement and to affix WBID's corporate seal to this Agreement.

6.9 Governing Law and Exclusive Forum. This Agreement shall be governed by, construed under and enforced in accordance with Massachusetts law without regard to conflict of law principles. Any claim or action arising under or relating to this Agreement may be brought only in the Hampden County Superior Court or in the United States District Court for the District of Massachusetts sitting in Springfield, Massachusetts, and the City and WBID hereby agree that venue is proper, and shall only be proper, in such forums.

6.10 Headings. The headings in this Agreement are set forth only for convenience, and the headings shall not be considered in the construction, interpretation or enforcement of the terms or obligations contained in this Agreement.

EXECUTED as a sealed instrument in two (2) or more counterparts to be effective as of the _____ day of _____, 2005.

WESTFIELD BUSINESS
IMPROVEMENT DISTRICT, INC.

By _____
Chair _____
Date: _____

CITY OF WESTFIELD

By _____
James M. Boardman
Director of the Department of Community Development and Planning
Date: _____

APPROVED AS TO APPROPRIATION:

By _____
Deborah Strycharz
City Auditor

REVIEWED BY:

By _____
Gregory I. Kallfa
Treasurer

APPROVED AS TO FORM:

By _____
Peter Martin
City Solicitor

The MOU should be reviewed and approved by the City/Town City/ Town Solicitor prior to formal signing of the Mayor or City/Town Council.

APPROVED:

By _____
Mayor Richard K. Sullivan, Jr.
Date: _____